RONALD WILLDEN

IBLA 86-183 Decided April 23, 1987

Appeal from a decision of Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to timely file annual proof of labor or notice of intention to hold the claims. ORMC 22219 through ORMC 22226, and ORMC 54493 through ORMC 54498.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   BLM may properly declare an unpatented mining claim located after Oct. 21, 1976, abandoned and void where the claimant failed to file either evidence of annual assessment work or a notice of intention to hold the claim prior to Dec. 31 of the year following the year in which the claim was located, as required by sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982).

2. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

   Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

APPEARANCES: Ronald Willden, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Ronald Willden appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated November 12, 1985, declaring Clover No. 1 through Clover No. 8 and Clover No. 9 through Clover No.

14 lode mining claims, 1/ abandoned and void for failure to timely file either evidence of assessment work or a notice of intention to hold the claims within the calendar year 1984 as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982).

Clover No. 1 through Clover No. 8 were located on August 24, 1979. Clover No. 9 and Clover No. 10 were located on September 1, 1982, and Clover No. 11 through Clover No. 14 were located on September 2, 1982. The case file contains a copy of an affidavit of assessment work for Clover No. 1 through Clover No. 8 for the assessment year ending September 1, 1983, and filed with BLM on October 11, 1983. There is also a copy of an affidavit of assessment work for Clover No. 1 through Clover No. 8 and Clover No. 9 through Clover No. 14 for the assessment year ending September 1, 1984, filed with BLM on December 16, 1983. Appellant filed neither a copy of an affidavit of assessment work nor notices of intention to hold the claims in 1984.

For claims located subsequent to the adoption of FLPMA, October 21, 1976, section 314 of the Act, 43 U.S.C. § 1744(b) (1982), requires the filing of annual proofs of labor or notices of intention to hold "prior to December 31 of each year following the calendar year in which the said claim was located." 43 U.S.C. § 1744(a) (1982).

On appeal, appellant states that on September 1 and 2, 1983, he performed the assessment work on these claims for the assessment year ending at noon, September 1, 1984. He explains that the affidavit of assessment work was filed with the Baker County Recorder on November 28, 1983, and was received by BLM on December 16, 1983. Appellant points out that the transmittal letter forwarding the affidavit to BLM clearly states that the filing was for the 1984 assessment year, and the filing occurred prior to December 31, 1984. Appellant believes that he complied with the spirit and requirements of FLPMA.

1/ The claims involved in this appeal and their corresponding BLM serial numbers are as follows:

"Claim Names	BLM Serial Number
Clover No. 1	ORMC 22219
Clover No. 2	ORMC 22220
Clover No. 3	ORMC 22221
Clover No. 4	ORMC 22222
Clover No. 5	ORMC 22223
Clover No. 6	ORMC 22224
Clover No. 7	ORMC 22225
Clover No. 8	ORMC 22226
Clover No. 9	ORMC 54493
Clover No. 10	ORMC 54494
Clover No. 11	ORMC 54495
Clover No. 12	ORMC 54496
Clover No. 13	ORMC 54497
Clover No. 14	ORMC 54498

[1] The Board has consistently held, in conformance with section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), and applicable regulations (43 CFR Subpart 3833), that the owner of an unpatented mining claim located after October 21, 1976, must file either evidence of annual assessment work or a notice of intention to hold the claim with BLM "prior to December 31 of each year following the calendar year in which the said claim was located." (Emphasis added.) Failure to timely file is deemed conclusively to constitute an abandonment of the claim and renders it void. 43 U.S.C. § 1744(c) (1982). Golden Triangle Exploration Co., 87 IBLA 191 (1985); Klondex Gold & Silver Mining Co., 69 IBLA 247 (1982).

[2] The question of early filing was the issue before the Board in James V. Joyce (On Reconsideration), 56 IBLA 327 (1981). In that decision the Board affirmed BLM's decision declaring appellant's mining claims located prior to October 21, 1976, abandoned and void for failure to file either proof of assessment work or notice of intent to hold within calendar year 1978. The Board noted that appellant alleged that he had filed proof of assessment work for both the 1977 and 1978 assessment years when he recorded the claims on October 7, 1977. The Board held, however, that the statute and the regulations required filing in the year following the year of recording.

Of particular concern is the language in section 314(a) requiring that the appropriate documents be filed "prior to December 31 of each year following the calendar year in which the said claim was located." (Emphasis added.) In James V. Joyce (On Reconsideration), supra, the Board considered the argument of various individuals who have pointed to the phrase "prior to" and, noting that the assessment year begins on noon September 1, have argued an individual could perform and file what would be known as "the previous assessment year's" proof in the last 4 months of the calendar year preceding the calendar year in which they should be filed and that such a filing would be "prior to" the end of that calendar year.

The Board found this analysis to be flawed. First, it pointed to the fact that the argument distorts the purpose of the recordation law. It emphasized that section 314 is not an assessment work statute but rather a recordation statute whose purpose is to inform the Department of those claims existing on public lands and the continued interest of the claimant in such claims. Additionally, section 314 requires the filing of either notices of intent to hold or proof of assessment work performed each year following either location (post-FLPMA) or recordation (pre-FLPMA) to keep the Department apprised of the fact that the claims are still active. Second, the legislative history of section 314 of FLPMA, supra, indicated that the filing of the proofs of labor were to be made on an annual basis and therefore must be made within each calendar year.

Also, the Board explained that allowance of early filing of annual assessment work would defeat the purpose of section 314:

> Finally, a construction of the statute which permitted the early filing of proof of assessment work would also, by the same

logic, permit the early filing of notices of intent to hold the claim. 4/ If we assume, as has been argued to the Board, 5/ that claimants have an election to file either proof of assessment or a notice of intent to hold, regardless of whether the necessity of performing assessment work under 30 U.S.C. § 28 (1976) has accrued, adoption of a system which would permit the early filing of the assessment work proofs would establish a procedure which would clearly nullify the animating rationale of the recordation provisions. Because of the nonsynchronized nature of the assessment and calendar year, an individual might be able to effectively skip filing proof of assessment every other year under such a system. The filing of notices of intent, because they would relate to purely subjective consideration, however, could theoretically obviate the need for filing in 5 or 20 years.

Thus, an individual claimant could file in one year separate documents manifesting an intent to hold the claim for each of the next 5 years. Each filing would clearly be made prior to the end of the year which it referenced. No document would violate the proscriptions of 18 U.S.C. § 1001 (1976), since, at the time of making each, the claimant did indeed have the subjective intent to hold the claims. Such a system, however, would clearly thwart the purpose of the Recordation Act, viz., keeping the Department informed of those claims which continue to be actively pursued. And what would be true for 5 years must, perforce of logic, be true for 20. Indeed, individuals would be well advised to make such multiple filings in view of the exacting and unavoidable consequences that accompany a failure to file timely. It is inconceivable that Congress meant to foster a system which would actually deprive the Department of the information that recordation is supposed to supply and we expressly refuse to adopt such an interpretation. [Footnotes omitted.]

4/ This is not to say that the filing of evidence of assessment work performed during the current assessment year is prohibited. However, such a filing will not relieve the claimant from any filing at all during the subsequent calendar year, for which he must file a notice of intent or refile evidence of the work done during the previous assessment year.

5/ See Alaskamin Co., 49 IBLA 49A (order issued May 29, 1981).

James V. Joyce (On Reconsideration), supra at 330.

The principles enunciated in James V. Joyce (On Reconsideration), supra, are applicable to appellant's case. We hold that where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after January 1 and on or before December 30. Accord, Robert C. LeFaivre, 95 IBLA 26 (1986).

We recognize that some confusion results from the discrepancy between the assessment year and a calendar year. An assessment year is defined at 30 U.S.C. § 28 (1982), which provides that "[t]he period within which the work required to be done on all unpatented mineral claims * * * shall commence at 12:00 meridian on the 1st day of September * * *." Therefore, the assessment year runs from September 1 to September 1 of the following year. However, the "year" contemplated by 43 U.S.C. § 1744 (1982), commences on January 1 and ends on December 30. 2/ Therefore, even though a claimant might do assessment work in the calendar year 1986 for the assessment year beginning on September 1, 1986, and ending September 1, 1987, and thus have FLPMA documents available for filing prior to December 31, 1986, any such documents filed prior to December 31, 1986, will apply only to the 1986 FLPMA filing period, and will not satisfy the filing requirements for 1987. 3/ The periods contemplated by the two statutes, unfortunately, are unrelated. See J. E. Stevens, 86 IBLA 291 (1985).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

John H. Kelly
Administrative Judge

2/ While express reference is made to the calendar year in 43 U.S.C. § 1744(a) (1982), the statutory "year" for filing a notice or proof of labor under the determination made in United States v. Locke, 471 U.S. 54 (1985), is 1 day short of being a year in length. Dec. 31 is later than the filing deadline and prior to the following calendar year.

3/ Early filing of affidavits of assessment work was discussed in Oregon Portland Cement Co. v. U.S. Department of the Interior, 590 F. Supp. 52 (D. Alaska 1981). The Court found early filing to be permissible. However, while no appeal was taken from this decision, the subsequent decision of the U.S. Court of Appeals in N.L. Industries, Inc. v. Secretary of the Interior, 777 F.2d 433 (9th Cir. 1985), was premised on the Supreme Court decision in United States v. Locke, supra, and effectively overruled the legal predicates of the District Court of Alaska. See, Red Top Mercury Mines, 96 IBLA 391, 394 (1986).